

FCC MAIL SECTION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 92M-1066  
30393

In the Matter of )  
Order to Show Cause Directed Against )  
MARIO J. GABELLI )  
and )  
GABELLI FUNDS, INC. )  
MM DOCKET NO. 92-201

MEMORANDUM OPINION AND ORDER

Issued: December 2, 1992 ; Released: December 4, 1992

1. Under consideration is a "Motion for Waiver" filed by Mario J. Gabelli and Gabelli Funds, Inc. (referred to herein, either individually or collectively, as Investors) on November 9, 1992. This motion is a part of a "Memorandum of Understanding" negotiated by the Mass Media Bureau (Bureau) and Investors to resolve this proceeding.

2. Investors seek a waiver of the provisions of Section 73.3555(c) of the Commission's rules,<sup>2</sup> 47 C.F.R., Section 73.3555(c) with respect to media

<sup>1</sup> The "Memorandum of Understanding" is being considered and acted upon in a separate Memorandum Opinion and Order issued contemporaneously herewith (FCC 92M-1067).

<sup>2</sup> Section 73.3555(c) provides as follows:

(c) One-to-a-Market Rule. No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls one or more such broadcast stations and the grant of such license will result in:

- (1) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station, computed in accordance with Section 73.183 or Section 73.186, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with Section 73.684, encompassing the entire community of license of the AM station; or

interests in the New York City market. Specifically, Investors hold a 20 percent voting stock interest in Rockland Communicators, Inc., and West-Land Communicators, Inc., which, respectively, are the licensees of WRKL(AM), New City, New York, and WXPS(FM), Briarcliff Manor, New York. Investors also hold interests in Chris-Craft Industries, Inc., (CCII) representing 11.24 percent of the voting power in the company. On August 24, 1992, BHC Communications, Inc., a subsidiary of CCII, acquired television station WWOR-TV, Secaucus, New Jersey. (See, FCC File No. BTCCT-920514KE.)

3. The Grade A contour of WWOR-TV, as computed in accordance with Section 73.684 of the Commission's rules, encompasses the entire community of license of WXPS(FM). Based on a stipulation, the Grade A contour of WWOR-TV also encompasses the entire community of license of WRKL(FM).

4. Note 7 to Section 73.3555 provides that the Commission will "look favorably" upon applications for waiver of Section 73.3555(c) that involve radio and television combinations in the top 25 television markets where there will be at least 30 separately owned, operated, and controlled broadcast licensees after the proposed combination.<sup>3</sup> The Note further provides that the "voice count" is to be based on an examination of television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market.<sup>4</sup>

5. WWOR-TV and the two radio stations are located in the New York City market which is ranked first among television markets.<sup>5</sup> In 1989, the Commission found that there were 93 separate voices in the New York City market.<sup>6</sup> The parties have stipulated that there has not been a decisionally significant reduction in the number of separate voices since then.

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- (2) The predicted 1 mV/m contour of an existing or proposed FM station, computed in accordance with Section 73.313, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with Section 73.684, encompassing the entire community of license of the FM station.

(47 C.F.R., Section 73.3555(c).)

<sup>3</sup> 47 C.F.R., Section 73.3555(c), Note 7. ("Top 25 Market/30 Voices" waiver test.) See, Memorandum Opinion and Order (MM Docket No. 97-7), 66 R.R. 2d 1115 (1989); Second Report and Order (MM Docket No. 87-7), 65 R.R. 2d 1589 (1989).

<sup>4</sup> 47 C.F.R., Section 73.3555(c), Note 7.

<sup>5</sup> See, market map in "1992 Broadcasting & Cable Market Place" at E-66.

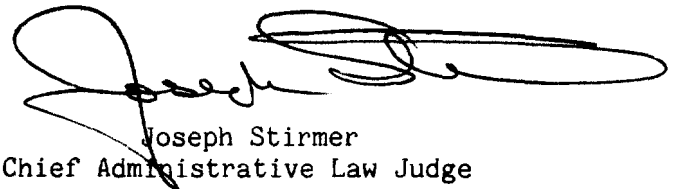
<sup>6</sup> Capital Cities/ABC, Inc., 4 FCC Rcd 5498 (1989). See, also, Pinelands, Inc., FCC 92-376, released August 21, 1992, at paragraph 27.

6. In connection with the transfer of control of WWOR-TV, Inc., licensee of WWOR-TV, from Pinelands, Inc., to BHC Communications, Inc., the Commission granted a temporary waiver of Section 73.3555 with regard to Investors' interests in WWOR-TV and the two radio stations.<sup>7</sup> Nevertheless, the Commission declined to act on the request for permanent waiver at that time, "because we want to be fully apprised of all [Investors'] interests, including any possible additional interests in the New York City market, before taking any action."<sup>8</sup> Moreover, the Commission stated that it would grant a temporary waiver of the one-to-a-market rule until "full information is available to us as to [Investors'] interests and until the disposition of [their] interests is resolved through the show cause proceeding . . . ."<sup>9</sup>

7. It appears that the Commission previously withheld granting a permanent waiver of Section 73.3555(c) because it was not fully apprised of all of Investors' media interests, and it wanted to await resolution of the show cause proceeding. Investors have now reported all of their potentially attributable media interests. Moreover, the show cause proceeding has now been resolved on the bases of the "Memorandum of Understanding" negotiated between the Bureau and Investors. As a result of the "Memorandum of Understanding," Investors have agreed to come into and remain in compliance with the Commission's rules. Investors' interests in WWOR-TV and in WXPS(AM) and WRKL(FM) clearly meet the "Top 25 Market/30 Voices" waiver test. Thus, and in view of the foregoing, a permanent waiver to allow Investors continued ownership of their stock interests in Chris-Craft Industries, Inc., Rockland Communicators, Inc., and West-Land Communicators, Inc., despite the overlap, is warranted.

Accordingly, IT IS ORDERED that the "Motion for Waiver" filed by Mario J. Gabelli and Gabelli Funds, Inc., on November 9, 1992, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

  
Joseph Stirmer  
Chief Administrative Law Judge



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<sup>7</sup> Pinelands, Inc., FCC 92-376, released August 21, 1992.

<sup>8</sup> Id., at paragraph 27.

<sup>9</sup> Id.